

THE MARRIAGE INSTITUTION

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417. Jewish marriage after the exile. The Jewish idea of marriage was naive and primitive. The purpose was procreation. Every man was bound to marry, after the exile, and could be compelled to do so, and to beget at least one son and one daughter. By direct inference sterility made marriage void. It had failed of its purpose. It was the naivete of this notion of marriage which led to the provision of witnesses for the consummation of the marriage. Marriage meant carnal union under prescribed conditions, and nothing else. In Deut. xxii. 28 f. the rule is laid down that a man who violated a maid must remain her husband. This is another direct inference from the view of marriage. The *ketitbah* was the document of a "gift on account of nuptials to be celebrated." It made the bride a wife and not a concubine or maid servant, for the distinction depended on the intention of the bridegroom. In the rabbinical period the betrothal and wedding were united. The wedding was made by a gift (a coin or ring), by a document (*ketuba*)¹ or by the fact of *concubitus*.¹ The man took the woman to wife by the formula: "Be thou consecrated to me," or later, "Be thou consecrated to me by the law of Moses and Israel." These formalities took place in the presence of at least ten witnesses, who pronounced blessings and wishes for good fortune. The third mode of wedding was forbidden in the third century A.D. In the Jewish notions of marriage we see already the beginning of the later casuistry. Procreation being the sense and purpose of marriage, the carnal act was the matter of chief importance. At the same time the Jews thought that copulation and childbirth rendered unclean. They

must be rectified by purification and penance. Thus the act had a double character ; it was both right and wrong. It was a conjugal duty not to be sensual.² All this contributed to the modern notion of pair marriage, for at last no sex indulgence was allowed outside of legal marriage. When the custom of the presence of witnesses in the bride chamber produced dissatisfaction a tent was substituted for the chamber. Later a scarf, ceremoniously spread over the heads of the pair, took the place of the tent. The custom arose that the pair retired to a special room and

¹ Deut. xxii. 29.
Eherechts, 848.

² Freisen, *Gesch. des kanon.*